

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL REVISION APPLICATION No 15 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE A.K.TRIVEDI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? Yes
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?
2 to 5 No

SHIVPRASANN SINH MAHORSIN CHAUHAN

Versus

STATE OF GUJARAT

Appearance:

MR SURESH M AGRAWAL for Petitioner
MR. AJ DESAI, APP for Respondent No. 1

CORAM : MR.JUSTICE A.K.TRIVEDI

Date of decision: 17/02/98

ORAL JUDGEMENT

1. Rule. Mr. A.J. Desai, learned APP waives service of Rule on behalf of Respondent. By the consent of the learned advocates appearing for the parties, the matter is finally heard today.
2. The petitioner has challenged the legality and propriety of the Order dated 29.12.1997 passed by the

learned Metropolitan Magistrate, Ahmedabad, Court No.10, in the proceedings of Criminal Case No. 1476 of 1997.

3. That the present petitioner has been rendering professional service as a Security Guard and he is the owner of one 12 Bore Gun. That services of the present petitioner was requisitioned by one Ramachandra Shankhedaprasad Shukla, residing at Monogram Mill Chawl, Rakhial, Ahmedabad, for his protection, on account of threats given by neighbours. That on 26.3.1997, the petitioner was present at the residential premises of said Ramchandra Shankhedaprasad Shukla as a Security Guard and he was armed with his gun. That at about 11.00 p.m., an incident of assault took place on said Ramchandra Shankhedaprasad Shukla and the petitioner had fired one round from his gun in the air to scare the assailants. That during the said incident, one of the assailants had snatched the gun from the petitioner and had run away. That Ramchandra Shankhedaprasad Shukla has lodged a FIR with Rakhial Police Station against 7 known -accused and 8 others unknown. The present petitioner was cited as one of the witness. That rival group also lodged a cross complaint, wherein, the present petitioner was shown as one of the accused. That the Rakhial Police had registered the offence from the FIR given by Ramchandra Shankhedaprasad Shukla vide Crime Register No. 34 of 1997 under Sections 143, 147, 148, 149, 325, 337,

427, 452, 395, 120-B and 34 of IPC as well as Section 135(1) of the Bombay Police Act. That during the investigation of said crime, the police has recovered the gun of the present petitioner from the accused as muddamal and on completion of investigation, Criminal Case of 1476 of 1997 has been filed in the court. That similarly, from the cross complaint filed by rival group, Criminal Case No. 1057 of 1997 has been filed in the court.

4. That the present petitioner being a professional Security Guard was in need of his gun which was seized and kept as a muddamal by police in the above stated criminal cases and thereby he applied to the Metropolitan Magistrate, Ahmedabad, Court No.10, for interim custody of the gun pending the trial of the said criminal cases. That said application was rejected by learned Metropolitan Magistrate, Ahmedabad, Court No.10, on the ground that report from Forensic Science Laboratory in respect to the said gun has not been received and till then, gun could not be returned.

5. That thereby the petitioner preferred Criminal

Revision Application No. 449 of 1997 in this court and vide Order dated 14.11.1997, the Court of Metropolitan Magistrate, Ahmedabad, Court No.10, was directed to take

appropriate steps for early receipt of the report of the Forensic Science Laboratory and thereafter to decide the application of the petitioner for interim custody of the said gun in accordance with law.

6. That on the basis of above stated order passed by this Court in Criminal Revision Application No. 449 of 1997 dated 14.11.1997, the petitioner made fresh application dated 17.12.1997 and claimed the interim custody of the muddamal gun on appropriate terms and conditions. That vide impugned Order, the learned Metropolitan Magistrate, Ahmedabad, Court No.10, rejected the application observing that Muddamal would be required for the purpose of identification and thereby it cannot be returned. The learned Metropolitan Magistrate further observed in the impugned order that muddamal being a gun, is not an object could be subjected to decay or destruction. That petitioner can renew his licence even without the actual custody of the gun.

7. Learned Advocate Rajesh M. Agrawal appearing on behalf of the petitioner has submitted that impugned order of the learned Metropolitan Magistrate is not only contrary to the provisions of law, but appears to have been passed without application of mind and in disregard of order passed by this Court dated 14th November, 1997, in Criminal Revision Application No. 449 of 1997 and

thereby the said order deserves to be quashed and set aside and it is necessary in the interest of justice that petitioner be granted the interim custody of the gun and the licence which are at present lying as muddamal in the court of Metropolitan Magistrate, Ahmedabad, Court No.10.

8. Shri A.J. Desai, learned APP appearing on behalf of the respondent - State has stated at the Bar on instructions from the Investigation Officer Mr.K.M. Patel, Senior Police Inspector, Rakhial, Ahmedabad, that the report of the the FSL in respect to the said gun has been received and Investigation Agency has no objection if the gun is returned to the petitioner on appropriate terms and conditions.

9. In overall consideration of facts and circumstances apparent from the record, in my opinion, the impugned order of the learned Metropolitan Magistrate, Ahmedabad, Court No.10 being erroneous and contrary to the law, deserves to be set aside and quashed. That as Investigating Officer has no objection in returning the interim custody of the gun, it would be just and proper, if the interim custody of the gun is given to the petitioner on appropriate terms.

(A) On the basis of the above stated discussion, Criminal Revision Application No. 15 of 1998 is allowed. Impugned order of the learned Metropolitan Magistrate, Ahmedabad, Court No.10 dated 29.12.1997 passed in the Criminal Case No. 1476 of 1997 is hereby set aside and quashed.

(B) Learned Metropolitan Magistrate, Ahmedabad, Court No.10, is directed to return the interim custody of the subject gun to the petitioner along with the licence on following terms and conditions:

(i) The petitioner shall furnish a security bond of Rs. 5,000/- (Rupees five thousand only) and shall file an undertaking in the trial court that he shall produce the said gun and licence as and when called for by the court.

In the result, this Criminal Revision Application succeeds. Rule is made absolute. No order as to costs.

p.n.nair